

### REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 1-2, 5-6, 9 and 12-14 are pending in the application. No claim amendments are presented, thus no new matter is added.

In the Office Action, Claims 1-2, 5-6, 9 and 12-14 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hayama et al. (U.S. Pat. 7,006,484, herein Hayama) in view of Davidson et al. (U.S. Pat. 6,483,820, herein Davidson).

Applicants respectfully traverse the above noted rejection under 35 U.S.C. § 103, as independent Claims 1, 2, 6 and 12 recite novel features clearly not taught or rendered obvious by the applied references.

Independent Claim 1, for example, recites a mobile communication system comprising:

a holding unit configured to hold layered data and a corresponding radio resource amount ***indicating at least one of a number of channels, a number of multiplexed codes or a transmission power required for transmitting the layered data;***

a determination unit configured to ***compare area resource information indicating at least one of an available number of channels, an available number of multiplexed codes or an available transmission power*** for respective radio areas covered by base stations with the radio resource amount held in the holding unit, and to determine, from layered data of a highest layer, at least one layered data of which the radio resource held in the holding unit satisfies the area resource information ...

Independent Claims 2, 6 and 12, while directed to alternative embodiments, recite similar features. Accordingly, the remarks and arguments presented below are applicable to each of independent Claims 1, 2, 6 and 12.

In rejecting Claim 1, p. 3 of the Office Action concedes that Hayama fail to disclose “holding layered data and a corresponding radio resource amount indicating at least one of a number of channels, a number of multiplexed codes or a transmission power required for

transmitting the layered data and comparing area resource information indicating at least one of an available number of channels, an available number of multiplexed codes or an available transmission power for respective radio areas covered by base stations with the radio.” In an attempt to remedy this deficiency, the Office Action relies on Davidson and asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the cited references to arrive at Applicants’ claims. Applicants respectfully traverse this rejection, as Davidson fails to teach or suggest the claimed features for which it is asserted as a secondary reference under 35 U.S.C. § 103.

Davidson describes a system and method for providing dynamic demand based management of traffic channel allocation in a mobile communications network providing high-speed circuit-switched data services.<sup>1</sup>

In rejecting the above emphasized features recited in Claim 1, the Office Action relies on Fig. 4 and col. 6, ll. 39-55 of Davidson. This cited portion of Davidson describes the use of resource restriction flags to indicate whether additional resources (e.g. a traffic channel) may be allocated to a mobile station. A resource restriction flag 396 value of Y indicates a restriction on upgrading due to a lack of radio resources. A traffic channel availability flag 398 value of N indicates that the MS 310 is already operating at the maximum allowable number of channels. The maximum transfer rate flag indicates whether the currently allocated channel or channels are currently transmitting data at the maximum rate per channel.

This cited portion of Davidson, therefore, merely describes whether resources are available to upgrade service at a mobile station based on a received request, and is in no way related to storing layered data and a resource amount required to transmit the layered data. Davidson also fails to teach or suggest comparing any such information to area resource information, whatsoever.

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<sup>1</sup> Davidson, Abstract.

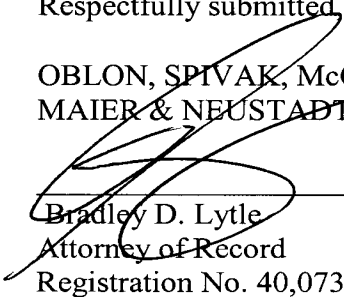
Therefore, Hayama, even if combined with Davidson, fails to teach or suggest “hold[ing] layered data and a corresponding radio resource amount *indicating at least one of a number of channels, a number of multiplexed codes or a transmission power required for transmitting the layered data*” and “*compar[ing] area resource information indicating at least one of an available number of channels, an available number of multiplexed codes or an available transmission power* for respective radio areas covered by base stations with the radio resource amount held in the holding unit” and “determine[ing], from layered data of a highest layer, at least one layered data of which the radio resource held in the holding unit satisfies the area resource information” as recited in amended independent Claim 1.

Accordingly, Applicants respectfully request that the rejection of Claim 1 (and the claims that depend therefrom) under 35 U.S.C. § 103 be withdrawn. For substantially similar reasons, it is also submitted that independent Claims 2, 6 and 12 (and the claims that depend therefrom) patentably define over Hayama and Davidson.

Consequently, in view of the present amendment and in light of the foregoing comments, it is respectfully submitted that the invention defined by Claims 1-2, 5-6, 9 and 12-14 is patentably distinguishing over the applied references. The present application is therefore believed to be in condition for formal allowance and an early and favorable reconsideration of the application is therefore requested.

Respectfully submitted,

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